

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI EX REL.)	
S.C. MANAGEMENT, INC. and)	
KENNETH STONE, M.D.,)	
)	
Relators,)	
)	
v.)	Case No. SC84320
)	
THE HONORABLE MARGARET M. NEILL,)	Oral Argument Requested
JUDGE OF THE MISSOURI CIRCUIT)	
COURT, TWENTY-SECOND JUDICIAL)	
CIRCUIT,)	
)	
Respondent.)	

Original Proceeding in Prohibition
Brief of Relators

Joseph C. Blanton, Jr. #32769
Bryan E. Nickell # 42744
BLANTON, RICE, SIDWELL, NICKELL & COZEAN, LLC
219 South Kingshighway, P.O. Box 805
Sikeston, Missouri 63801
(573) 471-1000
Fax: (573) 471-1012

ATTORNEYS FOR RELATOR S.C. MANAGEMENT, INC.

Ted Osburn # 33224
OSBURN, HINE, KUNTZE & YATES, L.L.C.
1359 North Mt. Auburn Road, Suite D
Cape Girardeau, Missouri 63701
(573) 651-9000
Fax: (573) 651-9090

ATTORNEYS FOR RELATOR STONE

TABLE OF CONTENTS

<u>TABLE OF CASES AND OTHER AUTHORITIES</u>	1
<u>JURISDICTIONAL STATEMENT</u>	3
<u>STATEMENT OF FACTS</u>	4
<u>POINT RELIED ON</u>	8
<u>ARGUMENT</u>	9
<u>CONCLUSION</u>	18

TABLE OF CASES AND OTHER AUTHORITIES

CASES

<u>Coale v. Grady Bros. Siding & Remodeling</u> , 865 S.W.2d 887 (Mo.App.S.D. 1993)	14
<u>LeCave v. Hardy</u> , 73 S.W.2d 637 (Mo.App.E.D. 2002)	12
<u>Maxwell v. City of Hayti</u> , 985 S.W.2d 920 (Mo.App.S.D. 1999)	12
<u>State ex rel. Drake Publishers, Inc. v. Baker</u> , 859 S.W.2d 201 (Mo.App.E.D. 1993)	10
<u>State ex rel. E.I. duPont de Nemours and Co. v. Mummert</u> , 890 S.W.2d 367 (Mo.App.E.D. 1994)	11
<u>State ex rel. England v. Koehr</u> , 849 S.W.2d 168 (Mo.App.E.D. 1993)	11
<u>State ex rel. Etter, Inc. v. Neill</u> , 70 S.W.3d 28 (Mo.App.E.D. 2002)	7, 15, 17
<u>State ex rel. Ford Motor Co. v. Bacon</u> , 63 S.W.3d 641 (Mo.banc 2002)	10
<u>State ex rel. Landstar Ranger, Inc. v. Dean</u> , 62 S.W.3d 405 (Mo. banc 2001)	10
<u>State ex rel. Linthicum v. Calvin</u> , 57 S.W.3d 855 (Mo.banc 2001)	5, 9
<u>State ex rel. Miracle Recreation Equip. Co. v. O'Malley</u> , 62 S.W.3d 407 (Mo.banc 2001)	10
<u>State ex rel. Willman, M.D. v. Marsh</u> , 720 S.W.2d 939 (Mo.banc 1986)	13

STATUTES

§508.010 R.S.Mo.	10, 11, 18
§508.040 R.S.Mo.	11

RULES

Rule 74.04	12
Rule 51.045	14
Rule 57.01	12

JURISDICTIONAL STATEMENT

This is an original proceeding for a Writ of Prohibition pursuant to Rule 97. Relators S.C. Management, Inc. and Kenneth Stone, M.D. filed a Petition in Prohibition in the Missouri Court of Appeals - Eastern District, seeking an Order prohibiting Respondent, The Honorable Margaret M. Neill, from proceeding further in the case of Young v. S.C. Management, Inc. et al., Case No. 002-00832 other than to transfer the case to a proper venue. That Petition in Prohibition was denied by the Eastern District Court of Appeals on February 22, 2002. On March 18, 2002, Relators filed a Petition in Prohibition in this Court, seeking the same relief. On April 23, 2002, this Court granted a Preliminary Writ of Prohibition. This Court has jurisdiction pursuant to Article V, § 4 of the Missouri Constitution as this is a proceeding for an original remedial writ.

STATEMENT OF FACTS

Relators are the two remaining Defendants in this lawsuit. Relator Kenneth Stone, M.D., is an individual living in Scott County, Missouri. Exhibit O, p. 246; Exhibit Q, p. 354. Relator S.C. Management, Inc. (“SCM”) is a Washington corporation with its principal place of business in California. SCM owns and operates Twin Rivers Regional Medical Center in Kennett, Dunklin County, Missouri. The registered agent of SCM is located in St. Louis County, Missouri. Exhibit A, p. 1.

This lawsuit was initially filed on March 28, 2000. Id. At that time, the only two Defendants were SCM and Tenet Healthcare Corporation (“THC”). The next day, Plaintiff filed an Amended Petition joining Relator Kenneth Stone, M.D., as an individual Defendant. Exhibit B, p. 5. Plaintiff’s sole theory on venue was that THC, as a parent company of SCM, was liable for the actions of SCM employees. Plaintiff’s Petition specifically plead venue in that “Defendant Tenet Healthcare Corporation is a Nevada corporation doing business in various counties in the State of Missouri including maintaining agents for the transaction of its usual and customary business in the City of St. Louis at 3635 Vista and 6150 Oakland.” Exhibit A, p. 2; See also Exhibit B, p.6; Exhibit I, p.77. No other allegations pertaining to venue were contained in the Petition.

On August 22, 2000, THC filed a Motion to Dismiss for Lack of Personal Jurisdiction. Exhibit C, p. 9. Also on August 22, 2000, SCM and Relator Stone filed a Motion for Change of Venue.¹ Exhibit

¹This case was initially removed to Federal Court on May 1, 2000. The case was remanded to State Court on July 21, 2000. Respondent determined that Relators timely objected to venue and properly preserved this issue. Exhibit P, p. 341-43.

E, p. 26. The residence of Relator Stone was asserted in his Answer as well as the Answer of SCM. Exhibit G, p. 70-71; Exhibit H, p. 75-76; see also Exhibit J, p. 83-84; Exhibit K, p. 88-89.

Plaintiff engaged in extensive discovery concerning the relationship between THC and SCM. Plaintiff took no fewer than five (5) depositions on this issue in addition to receiving extensive written discovery. See Exhibit L, p. 91. Plaintiff filed Suggestions in Opposition to the Jurisdictional and Venue Motions on October 23, 2001. Exhibit L, p. 91. Plaintiff then filed Supplemental Suggestions in Opposition on November 5, 2001 to address the changes in the law brought about by this Court's decision in State ex rel. Linthicum v. Calvin, 57 S.W.3d 855 (Mo.banc 2001). Exhibit M, p. 184. Even after this Court's holding in Linthicum, Plaintiff continued to allege that venue was proper in the City of St. Louis based on the incorrect allegation that THC had agents and employees in the City of St. Louis. See id. None of the documents filed by Plaintiff made any allegation that venue was proper based on the residence of Relator Stone.

THC filed a Reply Memorandum in Support of its Motion to Dismiss on November 15, 2001. Exhibit O, p. 226. On that same day, Relators filed a Reply Memorandum in Support of their Motion for Change of Venue. Exhibit N, p. 207. In an Exhibit to those Replies, the address of Relator Stone was listed as "108 Greenbriar, Sikeston, MO 63801" in signed Answers to Interrogatories. Exhibit O, p. 246. Plaintiff does not contend, nor has Plaintiff ever contended, that Defendant Stone is a resident of St. Louis. See Exhibit L, p. 91. This fact is not and has never been in dispute.

On December 7, 2001, Respondent took up THC's Motion to Dismiss for Lack of Personal Jurisdiction. Exhibit P, p. 341. She also took up Relators' Motion for Change of Venue. Id. Respondent dismissed THC for lack of personal jurisdiction. However, Respondent denied Relators' Motion for

Change of Venue. Respondent's Order stated that the applicable venue statute was §508.010 R.S.Mo. Respondent also held that "under the statute, the suit may be brought in the county in which any defendant resides or in which the cause of action accrued. The residence of a corporation is the county in which it maintains its registered agent." Id. at 344.

However, Respondent decided the issue of venue based on the residence of Dr. Stone. Her Order held as follows:

Defendants have presented no evidence with regard to the residence of Defendant Stone, Plaintiff made no allegations regarding Stone's place of residence and Defendants have not directed the Court to anything in the record which would support the factual finding that Stone does not reside in the City

of St. Louis. Defendants have thus failed in their burden of proof on their issue of venue.

Id.

On December 24, 2001, Relators filed a Motion to Reconsider the Motion for Change of Venue. Exhibit Q, p.35-54. In that Motion, Relators incorporated their Motion for Change of Venue by reference. Moreover, Relators filed an Affidavit of Relator Stone wherein he stated that he has never lived in the City of St. Louis. Finally, Relators moved the Court to supplement the record, if necessary, with the attached Affidavit. Id. On January 16, 2002, Respondent denied the Motion to Reconsider. Exhibit T, p. 363-65.

Relators filed a Petition in Prohibition in the Missouri Court of Appeals, Eastern District. That Petition was denied on February 22, 2002. A Petition in Prohibition was filed in this Court on March 18, 2002. This Court issued a Preliminary Order in Prohibition commanding Respondent to transfer this case under the Eastern District's holding in State ex rel. Etter, Inc. v. Neill, 70 S.W.3d 28 (Mo.App.E.D. 2002). Respondent refused and an Answer to the Petition in Prohibition was filed.

POINT RELIED ON

RELATORS S.C. MANAGEMENT, INC. AND KENNETH STONE, M.D. ARE ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM PROCEEDING FURTHER IN THE UNDERLYING CASE OTHER THAN TO TRANSFER SAID CASE FROM THE CITY OF ST. LOUIS TO A PROPER VENUE, BECAUSE VENUE UNDER §508.010 R.S.MO. IS PROPER ONLY WHERE THE CAUSE OF ACTION ACCRUED, WHERE AN INDIVIDUAL LIVES, OR WHERE A CORPORATION KEEPS ITS REGISTERED AGENT, IN THAT IT IS UNDISPUTED AND BEFORE RESPONDENT IN THE UNDERLYING ACTION THAT THE CAUSE OF ACTION ACCRUED IN DUNKLIN COUNTY, RELATOR STONE IS A RESIDENT OF SCOTT COUNTY, AND THE REGISTERED AGENT OF S.C. MANAGEMENT, INC. IS IN ST. LOUIS COUNTY.

§508.010 R.S.Mo.

State ex rel. Willman, M.D. v. Marsh, 720 S.W.2d 939 (Mo.banc 1986).

State ex rel. Etter, Inc. v. Neill, 70 S.W.3d 28 (Mo.App.E.D. 2002).

LeCave v. Hardy, 73 S.W.2d 637 (Mo.App.E.D. 2002).

ARGUMENT

RELATORS S.C. MANAGEMENT, INC. AND KENNETH STONE, M.D. ARE ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM PROCEEDING FURTHER IN THE UNDERLYING CASE OTHER THAN TO TRANSFER SAID CASE FROM THE CITY OF ST. LOUIS TO A PROPER VENUE, BECAUSE VENUE UNDER §508.010 R.S.MO. IS PROPER ONLY WHERE THE CAUSE OF ACTION ACCRUED, WHERE AN INDIVIDUAL LIVES, OR WHERE A CORPORATION KEEPS ITS REGISTERED AGENT, IN THAT IT IS UNDISPUTED AND BEFORE RESPONDENT IN THE UNDERLYING ACTION THAT THE CAUSE OF ACTION ACCRUED IN DUNKLIN COUNTY, RELATOR STONE IS A RESIDENT OF SCOTT COUNTY, AND THE REGISTERED AGENT OF S.C. MANAGEMENT, INC. IS IN ST. LOUIS COUNTY.

I. The Issuance of a Writ of Prohibition is Proper in this Case.

Venue is clearly improper in the City of St. Louis. Relators request an order preventing Respondent from acting further in this case, other than to transfer the case to a proper venue. Prohibition will lie to prevent an abuse of judicial discretion, to avoid irreparable harm to a party, or to prevent the exercise of extra judicial power. State ex rel. Linthicum v. Calvin, 57 S.W.3d 855, 857 (Mo.banc 2001). Prohibition is appropriate to prevent unnecessary, inconvenient and expensive litigation. Id. Moreover, a Writ of Prohibition is proper when the Trial Court refuses to transfer a case from an improper venue to a proper venue. Id.; State ex rel. Ford Motor Co. v. Bacon, 63 S.W.3d 641 (Mo.banc 2002); State ex rel. Miracle Recreation Equip. Co. v. O'Malley, 62 S.W.3d 407, 408 (Mo.banc 2001); State ex rel. Landstar Ranger, Inc. v. Dean, 62 S.W.3d 405, 405 (Mo. banc 2001). If venue is improper where an

action is brought, prohibition lies to bar the trial court from taking any further action, except to transfer the case to a proper venue. State ex rel. Drake Publishers, Inc. v. Baker, 859 S.W.2d 201, 203 (Mo.App.E.D. 1993).

II. Evidence of Relator Stone's Residence was Properly Before Respondent.

Respondent denied Relator's Motion for Change of Venue based on the residence of Relator Stone. However, Relator Stone has never lived in the City of St. Louis. In fact, Plaintiff has never alleged that Relator Stone has ever lived in St. Louis. Moreover, Plaintiff does not now contend that Relator Stone ever lived in St. Louis. Even though this was never a basis for Plaintiff's allegations of venue, Respondent chose to keep the underlying case in the City of St. Louis on the mistaken assumption that the record had no evidence of Relator Stone's residence. Given that Plaintiff never alleged this as a basis for venue, Relators were not required to present any evidence of Relator Stone's residence. See discussion infra. However, this evidence was in the record before Respondent in any event.

After the Supreme Court's holding in Linthicum, it is clear that §508.010 R.S.Mo. is the applicable venue statute for this case.² Linthicum holds that a lawsuit is "brought" for venue purposes when any

²Relators believe that Respondent may argue that the applicable venue statute is §508.040 R.S.Mo. and that Linthicum is invalid. Even if that were the case, venue is not proper in the City of St. Louis. Respondent held that THC had no agents or employees anywhere in the state of Missouri. Exhibit C, p. 13; Exhibit P, p. 345-50. SCM has no employees or agents in the City of St. Louis. Exhibit E, p. 35-36; Exhibit C, p. 15. Thus, venue is improper in the City of St. Louis even if §508.040 R.S.Mo. applies.

subsequent defendants are added by amendment. Thus, the Court must look at the First Amended Petition on March 29, 2000. Exhibit B, p. 5. At that time, the Defendants were Dr. Kenneth Stone, SCM, and THC.

It is well settled that when suit is brought against one or more corporations and one or more individuals, the General Venue Statute, §508.010 R.S.Mo., rather than the Corporation Venue Statute, §508.040 R.S.Mo., applies. State ex rel. E.I. duPont de Nemours and Co. v. Mummert, 890 S.W.2d 367, 369 (Mo.App. 1994). For purposes of the General Venue Statute, the residence of a corporation is the location of its registered agent. State ex rel. England v. Koehr, 849 S.W.2d 168, 169 (Mo.App. 1993). Thus, under the General Venue Statute, venue is only proper where the cause of action accrued, where the corporation has a registered agent, or where an individual resides. See §508.010(3) R.S.Mo. The cause of action accrued in Dunklin County, Missouri. Exhibit A, p. 1; Exhibit K, p. 89. The registered agent of S.C. Management, Inc. is in St. Louis County. Exhibit A, p. 1. Relator Stone is a resident of Scott County, Missouri. Exhibit Q, p. 359. Finally, THC has no registered agent in the State of Missouri and was dismissed for lack of personal jurisdiction. Exhibit A, p. 1; Exhibit P, p. 350. Thus, venue is only proper in Dunklin County, St. Louis County, or Scott County, Missouri.

The residence of Relator Stone was properly before the Respondent. Moreover, it is completely undisputed that Relator Stone is a resident of Scott County and has never been a resident of St. Louis City. Relator Stone's residence was affirmatively stated in Answers filed with the Court. Exhibit G, p. 70-71; Exhibit H, p. 75-76. Moreover, it was affirmatively stated in the Motion for Change of Venue. Exhibit E, p. 31. Plaintiff has never alleged that Relator Stone is a resident of the City of St. Louis. See Exhibit L, p. 91. Plaintiff's entire venue theory centered around THC and whether or not it could be held accountable

for the actions of SCM employees and whether it had employees in the City of St. Louis. See id.; Exhibit B, p. 5-6. Most importantly, the residence of Relator Stone was listed as “108 Greenbriar, Sikeston, MO 63801” in signed Interrogatories submitted to the Court. Exhibit O, p. 246. Signed and sworn Interrogatory Answers may be used to the extent permitted by the rules of evidence; accordingly, these answers were competent evidence to be considered by the court. Rule 57.01(c); see also Rule 74.04(c)(2); LeCave v. Hardy, 73 S.W.2d 637, 640 (Mo.App.E.D. 2002). The Court may take judicial notice of the geographical location of cities in the state. Maxwell v. City of Hayti, 985 S.W.2d 920, 922 (Mo.App. S.D. 1999).

It was clearly before the Trial Court that Relator Stone was a resident of Scott County, Missouri. However, Respondent chose to use the claimed unknown residency status of Relator Stone as a basis for keeping the underlying case in the City of St. Louis. This is true even though Plaintiff never mentioned the residence of Relator Stone anywhere in his pleadings or briefings. Accordingly, this Court should make the Preliminary Writ absolute without further analysis.

III. Relators Are Not Required to Disprove Unpleaded Venue Theories.

Plaintiff made an express allegation of venue in his initial Petition and in every subsequent Petition. That sole allegation of venue was that “Defendant Tenet Healthcare Corporation is a Nevada corporation doing business in various counties in the State of Missouri including maintaining agents for the transaction of its usual and customary business in the City of St. Louis at 3635 Vista and 6150 Oakland.” Exhibit A, p. 2; See also Exhibit B, p. 5-6; Exhibit I, p. 77. Throughout all of the discovery and pleadings filed in this case, Plaintiff never alleged that venue was proper based on the residence of Relator Stone. Indeed, if venue was proper based on the residence of Relator Stone, Plaintiff would not have to resort to the joinder

of THC or the use of the “two step” to attempt to establish venue. If Relator Stone lived in St. Louis City, venue would unquestionably be proper and this case would never come before this Court.

Plaintiff did make a venue allegation in his Petition, i.e. that venue was proper in the City of St. Louis based on the residence of THC. Such an allegation, while not required by the civil rules³, is required by this Court. In State ex rel. Willman, M.D. v. Marsh, 720 S.W.2d 939 (Mo.banc 1986), this Court addressed the issue of whether a Petition adequately pled venue in regard to where a cause of action accrued under §508.010(6) R.S.Mo. This Court held that a “litigant cannot establish venue in a particular county through a ‘mere allegation’ that venue is proper there.” Marsh, 720 S.W.2d at 940 (quoting State ex rel. Toberman v. Cook, 281 S.W.2d 777, 780 (Mo.banc 1955)). Rather, a plaintiff is required to “state a cause of action under” the appropriate venue statute for fixing venue in a particular county. Marsh, 720 S.W.2d at 940. In Marsh, the Court found that the allegations of the Petition, while not a textbook model, were sufficient to provide a basis for venue. Id. at 941.

As in Marsh, Plaintiff in the underlying case made a fact specific allegation of venue. Relators admittedly had the burden of proof in refuting those factual venue allegations (i.e. that THC was properly before the court and had agents and employees in the City of St. Louis). See Coale v. Grady Bros. Siding & Remodeling, 865 S.W.2d 887, 889 (Mo.App.S.D. 1993). Relators refuted those factual allegations to Respondent’s satisfaction, causing THC to be dismissed from the lawsuit. See Exhibit P, 343-50. Thus, every factual venue allegation required by Marsh was disproved by Relators. At that time, Respondent

³ While no Civil Rule required a pleading of venue at the time the underlying case was filed, it is now required by Rule 51.045.

should have transferred the case to another venue, instead of basing venue on another, unalleged possibility (i.e., the possibility that Dr. Stone had ever lived in St. Louis) which, in fact, was not the case. Further, even if Respondent wanted to give the non-moving party every benefit of the doubt, she erred in refusing to transfer venue after the Motion for Rehearing was filed and argued.

This precise issue was recently addressed by the Missouri Court of Appeals, Eastern District. In State of Missouri, ex rel., Etter, Inc. v. Neill, 70 S.W.3d 28 (Mo.App.E.D. 2002), the plaintiff alleged in his petition that venue was proper in the City of St. Louis because the defendant ad litem was a city resident. The defendants moved to transfer venue from the city, claiming that the residence of the defendant ad litem provided no basis for city venue. Id. at 30. The trial court denied the application for transfer but did not find that the defendant ad litem's residence provided a basis for city venue. Rather, it found that the defendants had failed to present evidence that a dissolved corporation did not have any agents in the city for its usual and customary business. Id. The defendants then asked for reconsideration and provided an affidavit affirmatively stating that it had ceased doing business and it had never maintained an office or agent in the city. The Trial Court again denied transfer to a proper venue. Id.

The Court of Appeals granted a preliminary Writ of Prohibition. On review of this matter, the Appellate Court held that venue was improper. Specifically, the Court held that

[w]hen a basis for venue is pleaded, we can hardly fault relator for adducing evidence in opposition to the pleaded basis. Relator correctly, and timely, challenged venue predicated on the basis of the defendant ad litem's residence. Respondent would fault relator for not disproving all possible bases for venue, whether pleaded or not. While relator bore the burden of persuasion and proof, it does not need to disprove bases of

venue that were never pleaded to meet those burdens. (emphasis added).

Id. at 32.

Etter is identical to the present situation. Plaintiff alleged that venue was proper in the City of St. Louis based on the residence of THC. Respondent found that THC was not subject to jurisdiction in Missouri and properly dismissed that entity. However, Respondent incorrectly held that since there was no evidence in the record of Defendant Stone's residence, venue was proper in the City of St. Louis. As in Etter, Respondent is requiring Relators to argue against not just the pleaded bases of venue, but all conceivable possibilities of venue as to any defendant. The Eastern District has clearly held that this is incorrect and Relators would respectfully suggest that this Court adopt the Eastern District's reasoning.

IV. Respondent Erred in Refusing to Consider Relator's Motion to Reconsider
and Grant Leave to File the Attached Affidavit.

After Respondent refused to transfer venue on the incorrect assumption that Relator Stone could possibly be a resident of the City of St. Louis, a basis for venue never before asserted either by Respondent or opposing counsel, Relators filed a Motion to Reconsider and attached an affidavit from Relator Stone stating that he had never lived in the City of St. Louis. Exhibit Q, p. 351. Relators also requested leave to file the attached affidavit as part of the record. Id.

Respondent improperly refused to consider the Affidavit filed with the Motion to Reconsider. See Exhibit T, p. 363-65. Rule 44.01 provides that

When a motion is supported by an affidavit, the affidavit shall be served with the motion;
and, except as otherwise provided by law or rule in connection with a motion for a new
trial, opposing affidavits may be served not later than one day before the hearing, unless

the court permits them to be served at some other time.

(emphasis added). As the residence of Relator Stone is undisputed and referenced at other places in the record, Respondent did not have to consider the Affidavit to make the appropriate ruling. However, the Affidavit was submitted so the record would be crystal clear as to the residence of Relator Stone. Respondent refused to consider this Affidavit, even though the actual facts listed in the Affidavit are not in dispute. There is no “reason to disallow Relators’ supplementation of the record where Respondent seeks to uphold venue on a basis that was never pleaded.” Etter, 70 S.W.3d at 32. Accordingly, Respondent should be required to consider the Affidavit attached to the Motion for Rehearing.

IV. CONCLUSION

Respondent has failed to properly determine venue in this case. It is completely undisputed that Relator Stone has never lived in the City of St. Louis. Plaintiff never alleged that Relator Stone is a resident of the City of St. Louis and never made any such allegation in any of his pleadings. Plaintiff's sole venue theory was the residence of THC, which was dismissed from this case. The residence of Dr. Stone is undisputed and adequately in the record before Respondent.

As the case now stands, there are two Defendants, a corporation and an individual. The proper venue statute is clearly §508.010 R.S.Mo. Accordingly, venue is clearly proper in the county of Relator Stone's residence (Scott County), the county where the cause of action accrued (Dunklin County), or the county where SCM keeps its registered agent (St. Louis County). This Court should make its Writ absolute and order Respondent to transfer this lawsuit from the City of St. Louis to a proper venue.

Respectfully submitted,

BLANTON, RICE, SIDWELL, NICKELL & COZEAN, L.L.C.
219 South Kingshighway, P.O. Box 805
Sikeston, Missouri 63801
(573) 471-1000; Fax: (573) 471-1012

By: _____

Joseph C. Blanton, Jr. #32769

Bryan E. Nickell # 42744

ATTORNEYS FOR S.C. MANAGEMENT, INC.

OSBURN, HINE, KUNTZE & YATES, L.L.C.
1359 North Mt. Auburn Road, Suite D
Cape Girardeau, Missouri 63701
(573) 651-9000
Fax: (573) 651-9090

By: _____

Ted R. Osburn #33224

ATTORNEYS FOR DR. KENNETH STONE

Proof of Service

I hereby certify that a copy of the above and foregoing document has been sent via First Class United States Mail, postage prepaid, to Stephen F. Meyerkord, Attorney for Plaintiff, One Metropolitan Square, Ste. 3190, St. Louis, Missouri 63102, phone number (314) 421-0763; and the Honorable Margaret M. Neill, Circuit Court, Div. 22, 5th Floor, 10 N. Tucker Blvd., St. Louis, MO 63101, phone number (314) 622-4682 on this ____ day of July, 2002.

Bryan E. Nickell

Rule 84.06 Certification

Pursuant to Rule 84.06(c), the undersigned counsel states that this brief includes the information required by Rule 55.03, complies with the limitations in Rule 84.06(b) and contains 4258 words.

Bryan E. Nickell #42744